SUPREME COURT, U.S.
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No. 93-1890

In the Supreme Court of the United States

OCTOBER TERM, 1994

CEMEX, S.A., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether, for purposes of price comparison and calculation of the antidumping duty owed for foreign goods sold in the United States at less than fair market value in their country of export, the federal antidumping statute, 19 U.S.C. 1673 *et seq.* (1988 & Supp. IV 1992), prohibits the Department of Commerce from deducting pre-sale transportation costs for the goods sold within the country of export in order to make a fair comparison to the United States price of the goods.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-12a) is reported at 13 F.3d 398. The opinion of the United States Court of International Trade (Pet. App. 13a-25a) is reported at 787 F. Supp. 208.

JURISDICTION

The judgment of the court of appeals was entered on January 5, 1994. A petition for rehearing was denied on March 1, 1994. Pet. App. 64a-65a. The petition for writ of certiorari was filed on May 27, 1994. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The United States antidumping laws, 19 U.S.C. 1673 *et seq.* (1988 & Supp. IV 1992), protect domestic industries against dumping, that is, the sale of foreign manufactured goods in this country at less than the fair market value of those goods in the country of manufacture. See *Zenith Elecs. Corp.* v. *United States*, 988 F.2d 1573, 1576 (Fed. Cir. 1993). Under 19 U.S.C. 1673, the Secretary of Commerce[1] is authorized to investigate dumping, and if dumping is determined to exist and the International Trade Commission (ITC) also determines that the dumping has injured or threatens to injure a domestic industry, 19 U.S.C. 1677(2), the Secretary may impose a duty on the dumped merchandise equal to the "dumping margin," *i.e.*, the amount by which the foreign market value (FMV) of the imported merchandise exceeds the United States price (USP).

An antidumping duty investigation may be initiated by the Secretary, 19 C.F.R. 353.11, or upon petition by "any interested party," 19 C.F.R. 353.12 (defined as producers or workers involved in the production of "the like product" in the United States, 19 C.F.R. 353.2(k)(3)-(6)). After giving notice of an antidumping duty investigation in the Federal Register, 19 C.F.R. 353.11, 353.13, the Secretary examines sales of the merchandise over a relevant period of time, see 19 C.F.R. 353.42, and within 160 days publishes a preliminary determination, 19 C.F.R. 353.15, estimating the dumping margin, if any, and inviting presentation of argument by interested

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[1] The Secretary of the Treasury was originally named as administering authority of the antidumping law. 19 U.S.C. 1677(1). In 1980, responsibility for administering the antidumping laws was transferred to the Department of Commerce. See Reorganization Plan No. 3 of 1979, 44 Fed. Reg. 69,274-69,275 (1979).

parties, see 19 C.F.R. 353.38. The Secretary then makes and publishes a final determination and estimate of the dumping margin, if any, 19 C.F.R. 353.20, and issues an Antidumping Duty Order directing the Customs Service to assess the antidumping duties on the merchandise, 19 C.F.R. 353.21. An interested party may seek judicial review of the Secretary's final antidumping determination before the Court of International Trade (CIT), 19 U.S.C. 1516a, which has exclusive jurisdiction over such actions, 28 U.S.C. 1581(c). Appeal from a final decision of the CIT lies exclusively in the Court of Appeals for the Federal Circuit. 28 U.S.C. 1295(a)(5).

2. The central issues in dumping cases are the calculations of FMV and USP. See *Zenith Elecs. Corp.*, 988 F.2d at 1576. FMV is ordinarily calculated as the price at which the merchandise in question (or similar merchandise) is sold in the ordinary course of trade in the country where it is produced, 19 U.S.C. 1677b(a)(1)(A); 19 C.F.R. 353.46(a)(1).[2] USP is either the "purchase price"[3] or the "exporter's sales price"[4] of the

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[2] If there are insufficient reliable data about such sales, FMV may be calculated as the price at which the merchandise is exported to countries other than the United States, 19 U.S.C. 1677b(a)(1)(B), or by a "constructed value" based on material, labor, and other costs, 19 U.S.C. 1677b(a)(3) and (e).

[3] "Purchase price" is the price at which a buyer in the United States agrees to purchase the merchandise from a reseller or from the foreign manufacturer. *Zenith Elecs. Corp.*, 988 F.2d at 1577; 19 U.S.C. 1677a(b). That measure of USP is used when the United States importer is unrelated to the foreign manufacturer. *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1572 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022 (1984). See Pet. App. 2a n.2.

[4] "Exporter's sales price" is the price at which the foreign manufacturer or its agent agrees to sell the merchandise in the United States. *Zenith Elecs. Corp.*, 988 F.2d at 1577; 19 U.S.C. 1677a(c). The antidumping law attempts to construct value on the

merchandise, whichever is appropriate. 19 U.S.C. 1677a(a). The statute provides for upward and downward adjustments to both FMV and USP calculations to account for factors unrelated to dumping that might distort the accuracy of the dumping margin as a measure of less-than-fair-value United States sales. As the Federal Circuit has observed, "[f]oreign market value and United States price represent prices in different markets affected by a variety of differences in the chain of commerce by which the merchandise reached the export or domestic market. Both values are subject to adjustment in an attempt to reconstruct the price at a specific, 'common' point in the chain of commerce, so that value can be fairly compared on an equivalent basis." *Smith-Corona Group* v. *United States*, 713 F.2d 1568, 1571-1572 (1983), cert. denied, 465 U.S. 1022 (1984). Thus, the statute addresses such factors as export packing costs, differences in commercial quantities sold at home and by export, and rebated or uncollected taxes or duties (see 19 U.S.C. 1677a(d), 1677b(a)(1) and (4)), which could affect USP differently from FMV and could lead to an inaccurate comparison if not accounted for. *Zenith Elecs. Corp.*, 988 F.2d at 1577.

At issue in this case is the proper treatment of one such adjustment: the adjustment for transportation costs of the finished product. The statute specifies that the USP shall be reduced by the amount, if any, included in that price attributable to the "costs, charges, and

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basis of arm's length transactions; thus USP is determined by the exporter's sales price when the importer is related to the foreign manufacturer. In such cases, an arm's length transaction does not occur until the goods are resold by the importer/agent to a retailer or to the public. *Smith-Corona Group*, 713 F.2d at 1572. See Pet. App. 2a-3a n.2.

expenses * * * incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States." 19 U.S.C. 1677a(d)(2)(A). The provision for calculating FMV, 19 U.S.C. 1677b, contains no similarly express provision for reducing FMV because of shipment costs for merchandise sold to a customer in the same country (variously called "home-market movement expenses" or "inland freight expenses"). The Secretary has therefore invoked other sources of authority in the antidumping laws to adjust for home-market movement expenses in order to achieve a fair, "apples-to-apples" comparison between USP and FMV.

Before introducing the practice challenged in this case, the Secretary relied on the "circumstances-of-sale" adjustment allowed under 19 U.S.C. 1677b(a)(4)(B) to deduct from FMV the portion of home-market movement costs directly related to particular sales (typically, post-sale transportation costs).[5] And, where

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[5] See *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 57 Fed. Reg. 4981 (1992). Section 1677b(a)(4)(B) authorizes a downward adjustment to FMV where "it is established to the satisfaction of [the Secretary] that the amount of any difference between the United States price and the foreign market value * * * is wholly or partly due to * * * differences in circumstances of sale." That provision grants considerable discretion to the Secretary, see *Smith-Corona Group*, 713 F.2d at 1575, who has interpreted it generally to limit the allowance "to those circumstances which bear a direct relationship to the sales compared," 19 C.F.R. 353.56(a). Post-sale expenses typically meet that test. Pre-sale expenses, in contrast, typically are considered to be "indirect" general costs of doing business in the industry, and thus not deductible from FMV as a "circumstance-of-sale," see *LMI-LA Metalli Industriale, S.p.A.* v. *United States*, 912 F.2d 455, 457 (Fed. Cir. 1990), although in some circumstances pre-sale expenses can be considered

USP was based on exporter's sales price, the Secretary used the "exporter's sales price" offset (ESP), 19 C.F.R. 353.56(b)(2), to deduct pre-sale home-market transportation costs from FMV.[6] The Federal Circuit upheld the use of that offset in *Smith-Corona Group*, 713 F.2d at 1578-1579 (construing the predecessor regulation, 19 C.F.R. 353.15(c) (1980)). That regulatory offset does not apply, however, when the USP side of the comparison is based on purchase price. Thus, under prior practice, the Secretary could deduct *post*-sale transportation costs on both the USP and FMV sides of the calculation regardless of the type of USP involved, but could typically deduct *pre*-sale home market transportation costs from FMV only where USP was based on the exporter's sales price.[7] The Secretary therefore introduced a pre-sale movement expense factor into the calculation of FMV to prevent FMV from being skewed when USP is based on purchase price.

"direct," see *Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom*, 58 Fed. Reg. 6210 (1993).

[6] The ESP offset allows a deduction from FMV to balance the special deduction required from USP, when USP is based on exporter's sales price, for "expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise", 19 U.S.C. 1677a(e)(2) (*i.e.*, indirect expenses). The offset allows the deduction of home market indirect selling expenses up to the amount of indirect selling expenses deducted from USP.

[7] Pre-sale home-market transportation costs could also be deducted from FMV when USP was based on purchase price in those limited circumstances where those costs are sufficiently related to the sales under consideration to qualify for a circumstance-of-sale adjustment. See note 5, *supra*.

Beginning with the antidumping determination in this case, see Pet. App. 18a-20a, the Secretary, drawing on his authority and expertise in the implementation of the antidumping laws, determined that *all* ex-factory movement expenses should be deducted from *all* calculations of FMV to the same degree they are deducted from USP. The purpose of that adjustment is to achieve the statutory goal of a fair comparison between USP and FMV regardless of the type of USP involved. As the Secretary has explained:

> In the past, the Department has treated pre-sale movement expenses incurred on home market sales as either production costs or indirect selling expenses. However, we have reconsidered our treatment of these expenses. The Department does not distinguish between pre-sale and post-sale movement charges when calculating an ex-factory U.S. price. Therefore, to ensure an "apples-to-apples" comparison, the Department has deducted all movement charges, presale and post-sale, from foreign market value.

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan, 56 Fed. Reg. 26,056 (1991) (citing the final administrative determination in this case, *Gray Portland Cement and Clinker from Mexico*, 55 Fed. Reg. 29,244 (1990)).

3. In 1989, an antidumping investigation was initiated by a petition filed by respondent Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement (Ad Hoc Committee) alleging that imports of Mexican gray

portland cement and clinker[8] were being sold in the United States at less than fair value within the meaning of the antidumping laws. Petitioner CEMEX, S.A., and respondent Apasco, S.A. de C.V., were named as respondents in the Ad Hoc Committee's administrative petition. See 54 Fed. Reg. 43,190 (1989); Pet. App. 13a-14a.

The Secretary issued preliminary, *Gray Portland Cement and Clinker from Mexico*, 55 Fed. Reg. 13,817 (1990), and final, *Gray Portland Cement and Clinker from Mexico*, 55 Fed. Reg. 29,244-29,253 (1990) (Pet. App. 26a-63a), determinations concluding that the merchandise was being sold in the United States at less than fair value and estimating the margins of dumping. An antidumping duty order finalized these amounts. *Gray Portland Cement and Clinker from Mexico*, 55 Fed. Reg. 35,443 (1990). The dumping margins reflected deductions from FMV, *inter alia*, for inland freight expenses, including pre-sale inland freight expenses where USP was based on purchase price. See 55 Fed. Reg. at 29,251 (Pet. App. 55a). The Secretary rejected the contention that the deduction for foreign inland freight was unauthorized by statute, stating (*ibid.*):

> We have deducted from the U.S. price inland freight which represents movement expenses from the plant to the storage facility. Therefore, to ensure an "apples-to-apples" comparison, we have deducted movement expenses from the plant to the storage pick-up point on home market sales in our determination of FMV.

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[8] Gray portland cement is an hydraulic cement and the primary component of concrete. Clinker is an intermediate material produced when manufacturing cement, and is ground into finished cement. Pet. App. 28a.

The Ad Hoc Committee then brought this action in the CIT, contending, *inter alia* that Commerce lacked authority to adjust FMV, and hence to lower the dumping margins assessed, by deducting pre-sale inland freight expenses from FMV in a case involving purchase price imports. See Pet. App. 13a-15a, 17a-21a. The CIT rejected that claim. *Id.* at 17a-21a. It concluded that Commerce's decision to compare FMV and USP at the ex-factory level on both sides was permissible and reasonable, because "the statute would seem to allow [Commerce] some room to make the fairer choice," and "[t]he deduction of pre-sale inland freight expenses on the home market side engenders a more accurate and meaningful comparison." *Id.* at 21a.

4. The Court of Appeals for the Federal Circuit reversed. Pet. App. 1a-12a. The court stated that "FMV and USP are intimately related concepts" within the statutory scheme of the antidumping statute, which "revolves around the difference between the two." *Id.* at 8a. In the court's view, "[f]rom the Act's beginning * * * it is likely Congress has considered one only with reference to the other and has been well aware of any differences between them." *Ibid.* Accordingly, the court held that, because "Congress included a deduction for transportation costs from USP but not from FMV[,] * * * Congress did not intend pre-sale home-market transportation costs to be deducted from FMV." *Ibid.* The court thus determined that the statute was not silent or ambiguous on that point within the meaning of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), and it was unnecessary to consider, or defer to, Commerce's interpretation. Finally, the court stated that "[e]ven if the statute's 'primary goal'" of achieving fair comparisons "may seem to be ill-served by not allowing the deduction from

FMV," it "does not justify reading into the statute agency discretion that clearly is not there." Pet. App. 10a.

ARGUMENT

In our view, the court of appeals erred in inferring that Congress intended to deny inland freight deductions from FMV because it addressed the topic of transportation expenses explicitly only in defining USP. Not only does that holding override the Secretary's discretion to fill in gaps in the statutory scheme, it conflicts with the antidumping statute's central goal of making fair comparisons between foreign market sales price and United States sales price. The holding in this case, however, does not affect the Department of Commerce's authority to adjust FMV for home-market transportation costs in a majority of situations, and, in any event, it is likely that Congress will soon clarify Commerce's authority to do so in all appropriate cases under legislation that will implement the current General Agreement on Tariffs and Trade (GATT). Accordingly, this Court's intervention is not warranted.

1. The court of appeals held that Congress had an unambiguous intention to foreclose an inland freight deduction from FMV; the court therefore declined to consider whether deference to the Secretary's policy of deducting such costs was warranted under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-844 (1984). The statute, however, is silent as to any type of home-market transportation cost adjustment to FMV. See 19 U.S.C. 1677b. This Court has instructed that when a statute "is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute"; the

"court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." *Chevron*, 467 U.S. at 843-844.

In declining to apply that principle, the court of appeals determined that the statutory structure manifested a clear and unambiguous legislative intent. The court inferred from Congress's provision for a transportation cost deduction from USP, see 19 U.S.C. 1677a(d)(2), that Congress intended to deny a parallel deduction from FMV. Pet. App. 6a-8a. That inference rested (*ibid.*) on the canon of construction that when Congress "includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion." *Russello* v. *United States*, 464 U.S. 16, 23 (1983). That general presumption, however, is not an invariable rule. See, *e.g.*, *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 240 (1989) (holding that the definition of a term in one title of a statute applies also to the same *undefined* term in another title of the statute, notwithstanding the concurrence's reliance, see *id.* at 252, on the canon cited in *Russello*). Where, as here, the application of a canon of construction produces a result that is squarely at odds with the statute's central objective, courts should hesitate to conclude that Congress compelled that result through silence.

In this case, the court should have moved to the second step of *Chevron* and determined whether the agency has supplied a "reasonable," and thus permissible, interpretation of the statutory silence. 467 U.S. at 844. Commerce's interpretation here is reasonable, because the deduction of transportation costs from FMV is designed "to ensure an 'apples-to-apples' comparison" of

FMV and USP, and thus to determine the dumping margin fairly. *Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Certain Components Thereof, from Japan*, 56 Fed. Reg. 26,056 (1991). "Without the deduction from FMV, the comparison is apples to oranges: ex-factory prices in the United States but the *ex-warehouse* price in the foreign market." Pet. App. 6a.

Commerce's approach to this issue parallels the approach that the court of appeals specifically endorsed in *Smith-Corona Group* v. *United States*, 713 F.2d 1568 (Fed. Cir. 1983), cert. denied, 465 U.S. 1022 (1984). In *Smith-Corona*, the court affirmed Commerce's authority to allow a deduction from FMV, where no deduction was provided by statute, to balance a deduction expressly required by the statute for calculating USP. At issue there was the "exporter's sales price offset," now codified at 19 C.F.R. 353.56(b)(2), which comes into play when the USP side of the calculation is based on exporter's sales price. When exporter's sales price is the measure of USP, the statute requires deductions from it, *inter alia*, for general (*i.e.*, indirect) selling expenses incurred in the United States. 19 U.S.C. 1677a(e)(2).[9] As in this case, however, the statute is

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[9] In addition to the adjustments to USP applicable to both purchase price and exporter's sales price, the statute states:

> For purposes of this section, the exporter's sales price shall also be adjusted by being reduced by the amount, if any, of —
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> * * *
>
> (2) expenses generally incurred by or for the account of the exporter in the United States in selling identical or substantially identical merchandise * * *

19 U.S.C. 1677a(e)(2).

silent as to a parallel deduction from FMV for such expenses of selling the merchandise on the home market side. Rejecting the very sort of argument it accepted here, the court of appeals deferred to Commerce's authority, in the face of legislative silence on the question, to make an adjustment to FMV "to achieve a broader statutory purpose [of fair value comparisons] otherwise frustrated because" of the statutory method of computing USP. 713 F.2d at 1579.[10]

The court of appeals' earlier decision in *Zenith Elecs. Corp.* v. *United States*, 988 F.2d 1573 (1993), on which it principally relied here (Pet. App. 7a), is inapposite. In *Zenith*, the court disallowed Commerce's use of the circumstance-of-sale provision, 19 U.S.C. 1677b(a)(4)(B), to adjust for a factor affecting FMV (taxes that are assessed on home market sales, but that are not assessed on exports), where Congress had specifically provided another method, 19 U.S.C. 1677a(d)(1)(C), to account for the impact of such home market taxes in comparing FMV and USP. 988 F.2d at 1581-1582.[11] The court held

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[10] The court of appeals declined to analyze this case under *Smith-Corona* on the basis that "[t]he general prescriptions of *Smith-Corona*, which serve to guide Commerce in making reasonable interpretations of the Antidumping Act, do not apply where the Act itself clearly expresses the intent of Congress." Pet. App. 10a (citing *Zenith*, 988 F.2d at 1582). As we have shown, however, the court's premise—that the statute clearly expresses Congress's intent regarding the treatment of home-market transportation costs—was erroneous.

[11] To the degree such home market taxes are not subtracted in making the FMV/USP comparison, they will inflate the measure of FMV, and hence any antidumping duty, for reasons unrelated to value. USP, on the other hand, is determined net of U.S.-imposed sales taxes, import charges, or duties. 19 U.S.C. 1677a(a)-(c) and (d)(2)(A).

that even though the method prescribed in Section 1677a(d)(1)(C) did not completely neutralize the impact of home market taxes in that case,[12] Congress, by expressly addressing the home market tax problem in one way, had foreclosed Commerce's discretion to handle it in another. 988 F.2d at 1581-1582. The court also noted that to use the general circumstance-of-sale provision to correct for the impact of home market commodity taxes would "writ[e] the specific tax adjustment section [1677a(d)(1)(C)] out of the statute" and render it "completely superfluous." *Id.* at 1581.

In contrast, Congress has not directly addressed the question of how to account for the impact of home-market transportation costs in comparing FMV and USP. The provision for subtracting transportation costs in calculating USP, 19 U.S.C. 1677a(d)(2)(A), accounts for such costs only in United States sales; it

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[12] Instead of subtracting from FMV the amount of the taxes that would be assessed on home market sales that are not assessed on exports, Section 1677a(d)(1)(C) directs Commerce to *add* such taxes to *USP*. Where the taxes are assessed on a per-unit basis, or where home-market price and USP are equivalent, such an adjustment has the same effect as deducting the home-market taxes from FMV. In *Zenith*, however, taxes were assessed in the home market (Japan) as a percentage of price, and the pre-tax home-market price was higher than USP. Thus, imputing the home-market taxes as an adjustment to USP, as required by Section 1677a(d)(1)(C), exaggerated the dumping margin. See 988 F.2d at 1578. Commerce attempted to correct for that "multiplier effect" by making an additional, circumstance-of-sale adjustment to FMV to eliminate the impact of the multiplier. In addition to finding that adjustment precluded because of the specific provision of Section 1677a(d)(1)(C), the court of appeals also held that it would not qualify as a circumstance-of-sale adjustment, because the multiplier effect is not created by home market conditions but is instead a product of the dumping itself. 988 F.2d. at 1581.

does not address the problem of how to adjust for the impact of transportation costs when calculating FMV based on sales in the home market. Moreover, unlike the situation in *Zenith*, neither Section 1677a(d)(2)(A) nor any other statutory provision is rendered superfluous by Commerce's deduction of home-market transportation costs. Section 1677a(d)(2)(A) continues to provide the basis for deducting transportation costs in determining the ex-factory United States price of allegedly dumped imported goods. By making a parallel transportation cost deduction in calculating FMV in this case, Commerce was simply (as the court of appeals recognized, see Pet. App. 6a, 10a-11a) ensuring an "apples-to-apples" comparison at the ex-factory level in all situations.

2. Despite the court of appeals' error, review by this Court is not warranted. The decision below does not have a significant impact on Commerce's ability to make fair comparisons between USP and FMV in most cases. The decision has no impact in cases in which there are no (or no appreciable) inland freight costs in home market sales. And, where there are such costs, Commerce can continue to account for them in calculating FMV where USP is based on exporter's sales price, see note , *supra*, or where such costs qualify for a circumstance-of-sale adjustment, see note 5, *supra*. The ruling here thus has a significant impact on dumping margins only when the USP/FMV comparison involves United States purchase price sales paired with home-market sales that involve substantial pre-sale transportation costs *and* those costs do not qualify for a circumstance-of-sale adjustment.

Moreover, Commerce's authority to adjust FMV for home-market transportation costs as a general matter is likely to be clarified in legislation that the Admini-

stration will shortly submit to Congress for the implementation of the 1994 General Agreement on Tariffs and Trade (1994 GATT). See Office of the United States Trade Representative *Uruguay Round Of Multilateral Trade Negotiations General Agreement on Tariffs and Trade* (GPO 1994) [*Uruguay Round*]. Article 2 of the 1994 GATT, "Determination of Dumping," provides (¶ 2.4) that a "fair comparison" between "export price" (the equivalent of USP under current United States law) and "normal value" (the equivalent of FMV under current United States law) "shall be made at the same level of trade, normally at the ex-factory level," and that "[d]ue allowances shall be made in each case" for certain enumerated factors "and any other differences which are also demonstrated to affect price comparability." *Uruguay Round* at 147. Currently, the Administration's proposed implementing legislation specifically authorizes Commerce to adjust "normal value" (formerly FMV) to account for *all* home-market transportation costs. Staff of the House Comm. on Ways and Means, 103d Cong., 1st Sess., *Draft Legislation for the Administration's Implementing Proposals on the Uruguay Round Antidumping Agreement and Corresponding Provisions of the Subsidies Agreement* 96-102 (Comm. Print 1994). That proposal is consistent with the 1994 GATT's emphasis on achieving a fair comparison between domestic and foreign market sales at the ex-factory level of trade. If the legislation is enacted, the ruling of the court of appeals in this case will have minimal prospective significance.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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